



Environment Court of]

Waikato Environmental Protection Society Inc v Waikato Regional Council [2011] NZEnvC 1 (5 January 2011)

Last Updated: 30 January 2011

BEFORE THE ENVIRONMENT COURT

Decision No.[2011] NZEnvC 001

IN THE MATTER of an appeal under section 120 of the

Resource Management Act 1991

BETWEEN WAIKATO ENVIRONMENTAL

PROTECTION SOCIETY INC

(ENV-2006-WLG-000356/ & 000344)

AND AR & JM GRAY

(ENV-2006-WLG-000347/ & 000351)

Appellants

AND WAIKATO REGIONAL COUNCIL

Respondent

AND MATAMATA-PIAKO DISTRICT

COUNCIL

Respondent

AND NEW ZEALAND MUSHROOMS

LIMITED

Applicant

Court: Environment Judge B P Dwyer (Presiding)

Environment Commissioner P A Catchpole

Environment Commissioner J D Rowan (now retired)

Heard: at Hamilton on 26 February - 2 March 2007 5 March
Counsel/ Appearances:

P T Cavanagh QC and J Cuellar for Waikato Environmental
Protection Society Inc and A R and J M Gray

P M Lang for Matamata-Piako District Council

L Muldowney for Waikato Regional Council

E D Wylie QC and B I J Cowper for New Zealand Mushrooms
Limited

FINAL DECISION

Decision Issued:05/01/2011A: Appeals allowed and consent
overturned.

[1] We have issued four previous decisions in these
proceedings:

- Firstly, an interim decision[\[1\]](#) where we gave New Zealand Mushrooms Limited (New Zealand Mushrooms) the opportunity to fully explore the possibility of enclosing the bunker to bunker transfer operation aspect of its Morrinsville mushroom compost production site.
- A further interim decision[\[2\]](#) consequent upon receipt of

advice from New Zealand Mushrooms that it was not viable for it to fully enclose the bunker to bunker transfer operation. The further interim decision determined a request from New Zealand Mushrooms that the Court deferred its final decision in these proceedings and requested Waikato Regional Council to make application for an enforcement order applicable to ongoing operation of the mushroom compost production site pending final closure.

- An enforcement order[3] to mitigate adverse effects of ongoing operation of the mushroom compost operation pending its final closure.
- A costs decision awarding costs to the successful Appellants in these proceedings.[4]

[2] Additionally, the High Court issued a decision[5] upholding this Court's further interim decision.

[3] The net effect of this Court's further interim decision and the High Court decision is that it has been determined that a final decision on these proceedings will not issue until 31 December 2010. This is that final decision.

[4] It will be apparent from perusal of our two interim decisions that unless New Zealand Mushrooms was able to enclose its composting facilities . . . *to the extent required to achieve a level of odour capture which ensures that there are no offensive or objectionable odours discharged beyond the boundary* . [6]

then the Court would uphold the appeals filed by Waikato Environmental Protection Society Inc and A R and J M Gray. New Zealand Mushroom has formally advised that it is unable to achieve that level of enclosure.

[5] We now therefore finally determine these appeals. We uphold the appeals filed by Waikato Environmental Protection Society Inc and A R and J M Gray. Consequently, the consents granted to New Zealand Mushrooms Limited by Waikato Regional Council and Matamata-Piako District Council to enable ongoing operation of the mushroom compost production site situated at 206 Taukoro Road, Morrinsville are hereby

overturned. Operations of mushroom compost production activities on the site are to cease forthwith.

[6] We direct that this decision lies in the Court's Registry to issue on 31 December 2010 or on the first date the Court's Registry shall be open thereafter, unless otherwise directed DATED at WELLINGTON this 21st day of December 2009

[1] W 060/2007[2] W 015/2009[3] W 071/2009[4] W 070/2009[5] [2009] NZRMA 373[6] Para [201] Decision No W 060/2007

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